

## **REMARKS**

This is in response to the Final Office Action dated July 29, 2005 rejecting claims 1-4 and 6-36. Independent claims 1, 18 and 19 are amended herein. Dependent claims 13 and 17 are amended herein. Claims 1-4 and 6-36 remain pending. Claim 5 stands cancelled. Reconsideration is respectfully requested in view of the following remarks.

### **Claim Rejections under 35 U.S.C. §112**

The Examiner rejected claims 1-4 and 6-36 under 35 USC 112, first paragraph. The phrase "that does not tend to form micelle structures" is removed. The phrase "wherein said phospholipid is membrane-forming" (support in, for example paragraph 0092) is added.

The Examiner rejected claims 13 and 17 under 35 USC 112, second paragraph. The clarifying amendment to these claims is provided for the same notwithstanding anything stated to the contrary of record to date.

### **Claim Rejections under 35 U.S.C. §103:**

#### **A. Haynes (4725442) in view of Burke (5552156)**

The Examiner rejected claims 1-4, 8, and 12-17 under 35 U.S.C. 103(a) as being unpatentable over Haynes (4725442) in view of Burke (5552156).

##### **1. No *Prima Facie* case of obviousness:**

To establish a prima facie case of obviousness, "... there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine reference teachings." "...there must be reasonable expectation of success." "The prior art reference (or references when combined) must teach or suggest all the claim limitations." "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure." See MPEP 2143.

Applicants describe two characteristics of selected lipids that are used in the claimed compositions. A primary consideration is that a surface stabilizing lipid be membrane forming, and a secondary consideration being that the lipid also not have a proclivity for converting into micellar structures at the concentration used in this invention. [US 2002-

0147202, paragraph 0092]. In the claimed embodiments of the invention herein, microdroplets are provided with lipids that do not tend to form micelle structures and to better protect the enclosed camptothecin in the presence of lipophilic liquid. The membrane-forming lipids selected in accordance with the invention are chosen for their particular properties to achieve the desired results which are neither disclosed in nor suggested by the references of record.

For example, Haynes refers to a monolayer of phospholipid on the microdroplet which would be a micelle (column 2, line 52, column 3, line 65). In addition, Burke teaches solubilizing the camptothecin drugs in liposomes composed of lipids or in micelles composed of surfactants. Burke, however, does not teach dissolving camptothecin in a water-insoluble, pharmacologically acceptable lipophilic liquid. The drug in Burke is instead solubilized in a buffer (Column 7, line 60) before it is added to the liposomes. Liposomes or micelles in Burke encapsulate drug in the aqueous phase.

In this case, there is no “suggestion or motivation” in Haynes to choose the lipids that do not form a micelle and in Burke to dissolve the drug in an organic liquid. There is also no “suggestion or motivation” to combine these references.

Applicant respectfully asserts that the Examiner has not demonstrated that claims 1-4, 8, and 12-17 are *prima facie* obvious. Applicant requests that the examiner relies on a vague reference in Haynes of ‘anabolic steroids in cancer chemotherapy’ (column 8 lines 25-30). Camptothecin is not a steroid and possesses special properties such as, the lactam moiety of the drug is extremely susceptible to hydrolysis and the hydrolyzed product is ineffective for treating cancer (paragraph 0006).

## **2. Improper Hindsight:**

Further, Applicant respectfully asserts that the examiner has resorted to improper hindsight in making the rejection. The MPEP 2142 provides that “To reach a proper determination... the examiner must step backward in time and into the shoes worn by the hypothetical “person of ordinary skill in the art” when the invention was unknown and just before it was made.” The examiner “...must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person.” See MPEP 2142.

In this case, there is no teaching in the Haynes or Burke references that a non micelle forming lipid with a drug dissolved in the organic liquid would be a suitable drug delivery

vehicle. Given the lack of any teaching or suggestion for the claimed combination, it further points to the unobviousness of the claimed invention. Hence, Applicant respectfully requests the withdrawal of the obviousness rejection under 35 U.S.C. 103(a).

**B. Haynes (4725442) in view of Burke (5552156), further in view of WO 99/61001**

The Examiner rejected claims 9-11 and 18-36 under 35 U.S.C. 103(a) as being unpatentable over Haynes (4725442) in view of Burke (5552156), further in view of WO 99/61001.

For all the reasons mentioned above, these claims are also allowable as they contain similar limitations. Applicant respectfully requests the withdrawal of the obviousness rejection under 35 U.S.C. 103(a).

The Examiner is invited to contact counsel for the Applicants to address any questions or concerns. Given the status and history of this application, an Examiner Interview is believed to be warranted and would be most appreciated.

**CONCLUSION**

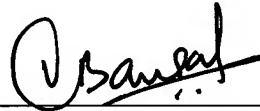
It is submitted that the present application is in form for allowance, and such action is respectfully requested. Should the Examiner have any questions, please contact the undersigned attorney.

The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. 23-2415 (Docket No. 12636-898).

Respectfully submitted,

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